

a semi-fixed state," as recited in claim 13. The Office Action admits that Sher '417 does not disclose this feature. To compensate for the deficiency, the Office Action asserts that Sher '254 discloses this feature. The Office Action further asserts that it would have been obvious to one having ordinary skill in the art to modify Sher '417 so that it has a pair of elastic closed loop members as taught by Sher '254. Applicant believes that this rejection is improper for at least the following two reasons.

First, Sher '417 teaches away from using an elastic material as a connecting means or the use of the elastic material would at least alter the principle operation of Sher '417. In Sher '417, after the location of the fixation ring (61) is adjusted, "the ring (61) is substantially immobilized with respect to the speculum (20) (column 3, lines 28-29)" and "[t]he fixation ring (61) is ... secured to the speculum to substantially immobilize the patient's eye for the procedure to be performed (column 4, lines 34-36)." Further, "[a]lternate equivalent means could also be employed to secure the fixation ring (60) to the speculum (20) (column 3, lines 31-33)." Thus, Sher '417, at least requires a structure that will substantially immobilize the eye. If a pair of elastic closed loop members were used as alleged by the Office Action, the ring (61) could not be substantially immobilized with respect to the speculum (20).

Accordingly, the skilled artisan would have immediately recognized that the use of the elastic material as a connecting means is directly contrary to the principle operation of Sher '417 (MPEP 2143.01).

Second, Sher '254 does not disclose or teach the use of an elastic member. In fact, the word elastic does not appear in the disclosure of Shier'254. The Office Action asserts that Sher '254 discloses the use of a hook and loop faster. However, Sher '254 only discloses that "mechanical attachment mechanisms could be used, such as hook and loop attachment, or even pressure sensitive or quick setting adhesives" (column 3, lines 21-23), none of which are disclosed as elastic. Thus, Sher '254 does not disclose any elastic member. In fact, Sher '254

also teaches away from the use of an elastic fastener. The primary purpose of the mechanical attachment in Sher '254 is that "regardless of the means utilized the important feature is that the fixation ring be able to be secured to the speculum once the ring has been properly positioned on the eye and the eye is in its proper orientation" (column 3, lines 21-27). This feature is so important it is even reflected in the title of Sher '254 "EYE FIXATION DEVICE" (emphasis added). Thus, the skilled artisan would have immediately recognized that the use of an elastic hook and loop closure is directly contrary to the primary purpose of the mechanical attachment in Sher '254 (MPEP 2143.01).

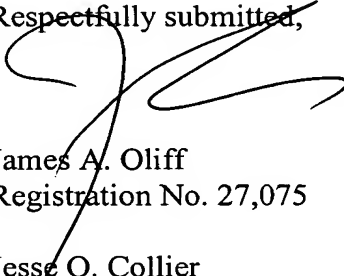
Thus, Sher '417 and Sher '254 fail to disclose or to have rendered obvious the feature of "the connection portion comprises a pair of elastic closed loop members for connecting the holding portion in a semi-fixed state," as disclosed in claim 13.

Claim 13 is thus patentable over Sher '417 and Sher '254. Further, claims 14-15, 18 and 26 are patentable for at least the same reasons, as well as for the additional features they recite. Applicant respectfully requests withdrawal of the rejection.

In view of at least the foregoing, Applicant respectfully submits that this application is in condition for allowance. Applicant earnestly solicits favorable reconsideration and prompt allowance of the pending claims.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, Applicant invites the Examiner to contact the undersigned at the telephone number set forth below.

Respectfully submitted,


James A. Oliff
Registration No. 27,075

Jesse O. Collier
Registration No. 53,839

JAO:HQY/jnm

Date: March 24, 2009

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

| |
|--|
| <p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p> |
|--|